

REMARKS/ARGUMENTS

Favorable reconsideration of the present application is respectfully requested.

Claim 1 has been amended to recite that the engine is not located in the maintenance passage. Basis for this is found in the figures and at page 2, lines 13-19. Claim 1 has also been amended to recite that the cooling device, the heat exchanger, the engine and the maintenance passage are arranged such that at least a portion of the air sent to the heat exchanger by the cooling device is exhausted through the maintenance passage without passing the engine. Again, basis for this is found in Figure 1 and on page 2 of the specification.

According to a feature of the invention set forth in the claims, at least a portion of the air sent through a heat exchanger by a cooling device in a construction machine is exhausted through a maintenance passage without passing the engine. The exhaust air is therefore permitted to flow more smoothly and uniformly, whereby cooling efficiency can be enhanced. For example, according to the illustrated embodiment, cooling air blown through an oil cooler 13 by a cooling fan 14 is sent through the maintenance passage 4 and so does not pass the engine 8.

Claims 1, 2, 10, 12 and 13 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. patent 6,745,860 (Yabe). Applicants wish to thank Examiner Restifo for the courtesy of an interview on March 27, 2006, at which time this rejection was discussed. In particular, Applicants pointed out that the air flow through the passage 41-45 in Figure 20 of Yabe travels through a passage housing the engine, so that the cooling air passes the engine. It was therefore agreed that Claim 1 as amended to further recite that at least a portion of the air sent to the heat exchanger by the cooling device is exhausted through the maintenance passage without passing the engine would define over this reference.

During the interview, the Examiner identified a newly discovered reference, Japanese patent publication 08-277713. JP '713 discloses a cooling device for a construction machine in which a secondary fan 30 blows cooling air through an oil cooler 7 in order to cool air circulated through the oil tank 3. However, there is no evidence in JP '713 that any portion thereof through which the cooling air from the oil cooler 7 is exhausted comprises a maintenance passage for maintenance of the engine, and so the claims also define over this reference.

Concerning paragraph 6 of the Office Action, it is noted that U.S. patent 6,901,903 (Nakajima et al.) was cited to teach features of the dependent claims and would provide no suggestion for overcoming the shortcomings of Yabe or JP '713.

Concerning paragraph 2 of the Office Action, it is noted that reference numeral 23 is mentioned at the penultimate line of page 9 of the specification.

As was discussed during the interview, references "AW" and "AX" of the Information Disclosure Statement filed on August 20, 2004 have not been specifically indicated as having been considered. The Examiner indicated that this was an oversight which would be corrected in the next Office Action.

Applicants therefore believe that the present application is in a condition for allowance and respectfully solicit an early Notice of Allowability.

Respectfully submitted,

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